

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Sections 30-778.1 through 30-778.18

Specific Purpose:

These sections are adopted to establish definitions of the terms, "applicant provider," "county," "criminal offender record information," "denial notice," "general exception," "State," "Tier 2 or disqualifying crime," and "disqualifying conviction" as they are used in this section of the regulations.

Factual Basis:

The definitions contained in these sections are necessary to ensure that the meaning of these terms, as they are used in this section (Section 30-778), is clear and consistent and to prevent any possible misinterpretation when the terms are used.

Section 30-778.2

Specific Purpose:

This section is adopted to specify that an applicant provider denied eligibility to enroll as an IHSS provider due to a conviction of a Tier 2 crime may be enrolled as an In-Home Supportive Services (IHSS) provider if the applicant provider is granted a general exception by the California Department of Social Services (CDSS).

Factual Basis:

This section is necessary to comply with Welfare and Institutions Code (WIC) section 12305.87(e)(1) which allows an applicant who has been convicted of a Tier 2 criminal violation to seek a general exception from CDSS.

Section 30-778.3

Specific Purpose:

This section is adopted to specify that all of the general exception request requirements detailed in the general exception regulations, Section 30-778.5, must be submitted to CDSS before a determination can be made regarding the general exception request.

Factual Basis:

This section is necessary to comply with WIC sections 12305.87(e)(2) and 12305.87(e)(3) which require CDSS to consider certain factors when determining whether to grant a general exception. In order to properly consider such factors, CDSS must obtain the required documentation and evidentiary material specified in the regulations prior to making a determination about the acceptance or denial of the general exception request.

Sections 30-778.4 through 30-778.421

Specific Purpose:

These sections are adopted to specify: 1) that an individual shall have a maximum of 45 calendar days after the date of the IHSS enrollment denial notice to submit the general exception request and all required documentation; 2) that an individual who fails to submit the general exception request to CDSS within 45 calendar days of the date of the IHSS enrollment denial notice shall be determined ineligible to be granted a general exception; 3) that an individual who does submit the general exception request within 45 calendar days of the date of the IHSS enrollment denial notice but does not submit all of the required documentation shall be sent an incomplete request notice, allowing an additional 15 calendar days from the date of the notice to submit the missing documentation; and 4) that CDSS shall close a general exception request case and issue a determination of ineligibility to be granted a general exception if the individual sent an incomplete request notice does not submit to the State the missing documentation within 15 calendar days from the date of the notice. The CDSS shall send a case closure notice to the individual and to the applicable county IHSS office.

Factual Basis:

These sections are necessary to establish a standard time frame for completing the general exception process that is not open-ended. Without this time frame, there would be no time limit for submission of a general exception request which would present an operational difficulty for CDSS. There would be no possible way to determine if an individual sent an initial denial notice or an incomplete request notice intends to attempt to obtain a general exception or if he/she has withdrawn from the process. The individual's Criminal Offender Record Information (CORI) may become outdated if not submitted promptly. The CDSS would also find it difficult to process a general exception request if the evidence provided was not current. Additionally, if the applicant is already serving an IHSS recipient and has not yet been enrolled with the county as an IHSS provider, that recipient is responsible for paying the applicant provider's wages out of his or her own pocket until the applicant provider is granted a general exception in order for him or her to enroll as an IHSS provider and be paid through the IHSS program. Lastly, the time limit is an operational necessity since the county maintains an open file on the applicant provider's case until it is settled and, without the time limit, the county would be required to keep the case open indefinitely without resolution. Forty-five

(45) calendar days from the date of the denial notice was established because it is a reasonable amount of time for an individual to submit the required documentation for an IHSS Applicant Provider Request for General Exception. Fifteen (15) calendar days from the incomplete request notice was established because it is a reasonable amount of time for an individual who submitted a general exception request but is still missing some of the required documentation as specified in Section 30-778.5.

Sections 30-778.5 through 30-778.511

Specific Purpose:

These sections are adopted to specify the required documents and evidence that must be submitted by an applicant provider seeking a general exception from CDSS. These sections detail the IHSS Applicant Provider Request for General Exception, including what information must be provided. These sections also specify that the general exception request must include a statement indicating the applicant provider understands he/she was denied eligibility to work as an IHSS provider due to a felony criminal conviction listed on his/her CORI and that he/she is requesting a general exception to become an IHSS provider and work for any IHSS recipient who wishes to hire him/her. These sections also state that the general exception request must be signed and dated by the applicant provider.

Factual Basis:

These sections are necessary to make the applicant provider aware of the specific personal identifying information he/she will be required to provide when requesting a general exception. These sections are also necessary to ensure that the applicant provider understands why he/she was denied eligibility to work as an IHSS provider and that they are aware that by submitting the general exception request, they are seeking a general exception to become an IHSS provider.

Sections 30-778.52 through 30-778.529(b)

Specific Purpose:

These sections are adopted to detail the specific documentation that must be submitted with the general exception request in order for the request to be evaluated by CDSS. This documentation includes a copy of the denial notice received from the county IHSS office stating the reason for the applicant provider's ineligibility to be an IHSS provider; a copy of the IHSS Program Provider Enrollment form submitted to the county by the applicant provider; documents (such as a Minute Order, Court-Issued Judgment of Conviction, or letter from the county Probation Department) showing that the applicant provider's current or last probation period was informal, if applicable; a description and verification (such as diplomas or certificate, if available) of any completed training, classes, treatment, counseling, or community service activities that would indicate rehabilitation or changed behavior; evidence of an official pardon by the Governor, if applicable; the

applicant provider's employment history for the previous ten years; copies of all police reports involving the disqualifying crime(s) for which the applicant provider was convicted or a letter from a law enforcement agency verifying that the reports no longer exist or cannot be released; three signed character reference statements; and a signed personal statement by the applicant provider which includes a description of the events surrounding the disqualifying crime(s) and of any actions taken by the applicant provider subsequent to the disqualifying crime(s) to ensure he/she will not be involved in any further criminal activity.

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(e)(3) which requires CDSS to consider certain factors when determining whether to grant a general exception. The required documentation detailed in these sections will provide CDSS with the information and evidence necessary to properly consider the factors specified in WIC section 12305.87(e)(3).

Sections 30-778.6 through 30-778.62

Specific Purpose:

These sections are adopted to identify the procedures by which CDSS will request a copy of the CORI from the applicable county. The county is required to deliver a copy of the CORI to CDSS via registered mail and in a manner which protects the security of the CORI information. The CORI cannot be modified or altered by the county in any way from its original form and content as provided by the California Department of Justice. The CDSS must record the date it receives the CORI from the county. The CDSS should use the CORI to determine if the applicant provider was correctly excluded based on a conviction for a Tier 2 disqualifying crime and that the ten-year exclusionary timeframe has not elapsed. If the applicant provider was incorrectly excluded, or if the ten-year exclusionary period has lapsed, the general exception request and all accompanying documentation, except for the CORI, shall be forwarded to the CDSS Provider Enrollment Appeals Unit with a Forwarding Documents for Evaluation notice.

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(e)(2) which details the method by which the CDSS shall request the CORI from the applicable county welfare department, public authority, or nonprofit consortium and the methods by which the county should deliver the CORI to CDSS.

Sections 30-778.63 through 30-778.639

Specific Purpose:

These sections specify the criteria CDSS shall follow when determining whether to grant a general exception to an applicant provider who has requested a general exception. These considerations include:

- The nature and seriousness of the crime(s) for which the applicant provider was disqualified and its relationship to the duties and responsibilities inherent in working as an IHSS provider. This includes the level of violence committed during the crime, the characteristics of the victim or intended victim, and whether the disqualifying crime was a sex offense for which the applicant provider was required to register under Penal Code section 290(c).
- The applicant provider's activities since conviction, including, but not limited to, his/her employment, education, participation in therapy, or community service which would indicate changed behavior.
- The number of convictions and the time that has elapsed since the conviction(s).
- The indication of a pattern of criminal behavior that could make the applicant provider a risk to the safety and well-being of an IHSS recipient placed in his/her care.
- The extent to which the applicant provider has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against him/her.
- Any evidence of rehabilitation, including character references, submitted by the applicant provider or by others on his/her behalf.
- The applicant provider's employment history and current and/or former employer recommendations.
- Details of the circumstances surrounding the disqualifying crime(s) that may indicate it is unlikely that the applicant provider would repeat such an offense.
- Details of whether a full and unconditional pardon has been granted by the Governor to the applicant provider for the conviction(s) for which he/she was denied eligibility.

Factual Basis:

These sections are necessary to comply with WIC section 12305.87(e)(3) which details the factors to be used by CDSS when determining whether a general exception request should be granted or denied. The guidelines established in

these sections are necessary to establish consistency in the granting and denial of general exceptions in cases with similar factual circumstances. Evaluating the seriousness of the criminal offense for which the individual was convicted, the number of convictions within the ten year time-frame, and the amount of time that has elapsed since the conviction or incarceration will aid CDSS in determining potential risk to IHSS recipients by allowing the applicant provider to work in the recipients' homes unsupervised and the likelihood of repetition of the criminal behavior. Further, evaluation of the applicant provider's behavior following his/her conviction and/or release from incarceration (using factors such as compliance with conditions of parole or restitution; employment history; continuing education; participation in therapy and/or community service; and character references) assist in determining the level of his/her changed behavior and the likelihood he/she will return to the commission of crimes which could put the health, safety, and property of IHSS recipients placed in his/her care at a more significant risk.

Sections 30-778.7 through 30-778.712

Specific Purpose:

These sections detail the procedures CDSS will follow if a general exception request is granted. In such a situation, CDSS shall send a General Exception Approval notice to the applicant provider informing him/her of the decision and also send a County General Exception Approval notice to the IHSS office in the county in which the applicant provider was denied eligibility due to a Tier 2 criminal conviction, informing the county IHSS office of the CDSS' decision to grant the general exception. Sections 30-788.711 and .712 further provide that an applicant provider who is granted a general exception must still complete the enrollment requirements specified in Section 30-776 to be an IHSS provider and that they remain subject to the exclusionary rules for all disqualifying convictions which occur after the granting of the general exception.

Factual Basis:

These sections are necessary to provide documentation to both applicant providers and the county IHSS offices detailing the CDSS' decision to grant the applicant provider's request for a general exception and allow him/her to enroll as an IHSS provider with the county IHSS office. The applicant provider may use this notice as proof of his/her eligibility to enroll as an IHSS provider within any county in the State of California. The county will file this notice in the provider's case file as evidence of the applicant provider's eligibility to enroll as an IHSS provider in that county despite his/her conviction of a disqualifying Tier 2 crime.

Sections 30-778.72 through 30-778.723

Specific Purpose:

These sections detail the procedures for informing an applicant provider that his/her general exception request has been denied, including the manner in which

the denial notice shall be sent to the applicant provider (either via personal service or registered mail) and that a County General Exception Denial notice should also be sent to the county IHSS office to be placed in the applicant provider's case file. These sections also detail what information should be included in the general exception denial notice, including the reasons for denial that specifically address the evidence submitted for consideration by CDSS, an explanation of the applicant provider's right to an administrative hearing to contest the CDSS' denial of the request, and a copy of the applicant provider's CORI.

Factual Basis:

These sections are necessary to comply with WIC sections 12305.87(f)(1) and (f)(2)(A) which set forth specific requirements regarding the information that must be provided to an applicant provider if his/her general exception request is denied and the required delivery method of such information as well as the applicant provider's right to an appeal if he or she chooses to contest CDSS' denial of the general exception request. CDSS must also send notification of the denial to the applicable IHSS county office to ensure that the county is aware of the general exception denial and that the applicant provider remains ineligible to enroll as an IHSS provider.

Section 30-778.73

Specific Purpose:

This section states that the CDSS shall retain copies of the General Exception Request, the applicant provider's CORI, and a dated copy of the General Exception Approval or Denial notice that was sent to the applicant provider with all enclosures until the date the disqualifying conviction(s) is no longer within the ten-year exclusionary period.

Factual Basis:

This section is necessary to comply with WIC section 12305.87(f)(2)(B) which requires the Department to retain a copy of the applicant provider's CORI and to record the date the copy of the approval or denial response was provided to the applicant provider and the county. CDSS has determined that it is also necessary to retain copies of the request and the actual notices in order to maintain for a complete and accurate record of the applicant provider's general exception request.

Sections 30-778.8 through 30-778.84

Specific Purpose:

These sections detail the process and procedures for the general exception denial appeal, including the method by which an applicant provider submits a written administrative hearing request and what actions must be taken by the CDSS once

the administrative hearing request is received. Once the hearing is complete, CDSS must provide a copy of the final administrative hearing decision to the applicant provider via certified mail and to the county IHSS office at least fifteen calendar days prior to the effective date of the final administrative decision.

Factual Basis:

These sections are necessary to comply with WIC sections 12305.87(g)(1) and 12305.87(g)(2) which set forth the method by which an applicant provider may request an administrative hearing via written request. These sections also require that the written hearing decision be sent to the applicant provider via certified mail as specified in WIC section 12305.87(g)(2). The CDSS has determined that it is also necessary to notify the applicable county of the outcome of the hearing so that the county is aware of whether the individual is eligible to enroll as a provider.

The fifteen calendar day deadline for CDSS to provide the copy of the final administrative hearing decision to the applicant provider and to the county IHSS office is a standard time period which provides a reasonable time frame for CDSS to process and return the copies of the final administrative hearing decision to the applicant provider and to the county IHSS office.

b) Identification of Documents Upon Which Department Is Relying

Assembly Bill (AB) 1612 (Chapter 725, Statutes of 2010), Section 24

c) Local Mandate Statement

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

d) Statement of Alternatives Considered

In developing the regulatory action, CDSS did not consider any other alternatives to the proposed regulatory action because the authorizing legislation specified that CDSS implement the provisions for which the regulations are proposed through All County Letters (ACLs) or similar instruction until regulations are adopted.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact On Business

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because the regulations only apply to specified individuals seeking to become IHSS providers.

f) Economic Impact Assessment [Government Code section 11346.3(b)]

In accordance with Government Code section 11346.3(b), CDSS has made the following assessments regarding the proposed regulations. The CDSS has made an initial determination that there is no impact on California businesses as a result of filing these regulations because these regulations are only applicable to specified individuals seeking to become IHSS providers.

This analysis is intended to be a tool or baseline to establish that these regulatory measures are the most cost-effective to affected California enterprises and equally effective in implementing the statutory policy or other provision of law.

Creation or Elimination of Jobs Within the State of California

The proposed regulations include the procedures to follow to apply for a general exception when an IHSS applicant provider has been denied eligibility to enroll as an IHSS provider due to a conviction of a Tier 2 crime(s).

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California because these regulations are only applicable to specified individuals seeking to become IHSS providers.

Creation of New or Elimination of Existing Businesses Within the State of California

The proposed regulations include the procedures to follow to apply for a general exception when an IHSS applicant provider has been denied eligibility to enroll as an IHSS provider due to a conviction of a Tier 2 crime(s).

The adoption of the proposed regulations will neither result in the creation of new businesses nor elimination of existing businesses in the State of California because these regulations are only applicable to specified individuals seeking to become IHSS providers.

Expansion of Businesses Within the State of California

The proposed regulations include the procedures to follow to apply for a general exception when an IHSS applicant provider has been denied eligibility to enroll as an IHSS provider due to a conviction of a Tier 2 crime(s).

The adoption of the proposed regulations will not result in the expansion of businesses in the State of California because these regulations are only applicable to specified individuals seeking to become IHSS providers.

Benefits of the Regulations

The general exception requirements themselves promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that those providers who have received general exceptions due to having serious or violent felony criminal convictions have been thoroughly evaluated and vetted by the CDSS to ensure that they have been properly rehabilitated and are unlikely to reoffend.

The document relied upon in proposing these regulatory amendments is AB 1612 (Chapter 725, Statutes of 2010), Section 24.

g) Benefits Anticipated from Regulatory Action

CDSS anticipates that these proposed regulations will benefit program stakeholders by consolidating all rules relating to IHSS general exception request requirements, which to date have only been released via ACLs, into a single place, the Manual of Policies and Procedures. The general exception request requirements themselves promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that those individuals seeking to become providers who have a criminal background of disqualifying convictions have been thoroughly vetted and determined to be rehabilitated and unlikely to commit similar offences in the future.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.